

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANDREA EMANUEL,

Plaintiff

-against-

STATE OF NEW YORK, DEPARTMENT OF  
CORRECTIONAL SERVICES ("DOCS"),  
LT. SALVATORE MUNAFO,  
LT. GEORGE VAN VALKENBURG,  
LT. ROBERT MURRAY,  
SGT ROBERT WILSON  
SUED IN THEIR INDIVIDUAL AND  
PROFESSIONAL CAPACITY,

Defendants.  
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**NOTICE OF MOTION**

08 Civ. 1250 (RMB)

ECF Case

**PLEASE TAKE NOTICE** that upon the annexed declaration of Julinda Dawkins and the exhibit annexed thereto, the accompanying Memorandum of Law dated June 16, 2008, and all other prior pleadings and proceedings herein, the undersigned, on behalf of defendants the State of New York, Department of Correctional Services ("DOCS"), Lt. Salvatore Munafo, Lt. George Van Valkenburg, Lt. Robert Murray and Sgt Robert Wilson (collectively "defendants"), will move this Court, before the Honorable Richard M. Berman, United States District Judge, at the Southern District of New York, United States Courthouse, 500 Pearl Street, New York, New York, for an order pursuant 12(b)(1) and (6) of the Fed. R. Civ. P. granting defendants' motion to dismiss the plaintiff's complaint on the grounds that: (a) plaintiff's Americans With Disabilities Act ("ADA") claim brought pursuant to 42 U.S.C. §12101 *et seq.* (Counts I & II) is barred by the Eleventh Amendment to the United States Constitution, fails to state a cause of action and is time barred; (b) plaintiff fails to allege a disability under either the ADA or the Rehabilitation Act; (c) plaintiff's

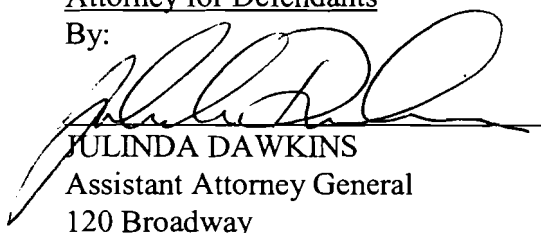
§1983 due process and equal protection claims (Count III) should be dismissed for failure to state a claim; (d) plaintiff's hostile environment claim (Count V) should be dismissed for failure to state a claim; (e) plaintiff's §1983 First Amendment Retaliation claim (Count VI) should be dismissed for failure to state a claim; (f) defendants are entitled to qualified immunity against all claims because the defendants' actions did not violate any clearly established constitutional rights of which they could reasonably have been aware; and (g) plaintiff's claims against the State, DOCS and the individual defendants in their official capacities are all barred by the Eleventh Amendment; and for such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that pursuant to the Order of the Honorable Richard M. Berman, opposition papers, if any, are to be served by July 16, 2008, and reply papers are to be served by July 25, 2008

Dated: New York, New York  
June 16, 2008

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By:



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